

CHAPTER 1 GENERAL INFORMATION

1.1 RELATED STATUTORY AND REGULATORY AUTHORITY

1. SC Code § 2-47-50 requires the Budget & Control Board (Board) to establish permanent improvement projects prior to an agency taking any action to implement the project or to expend any funds, except for advertising and interviewing for architectural and engineering services.
2. SC Code § 2-47-56 sets approval requirements for gifts-in-kind for architectural and engineering services and construction.
3. SC Code § 6-29-770 subjects state agencies, departments, and subdivisions to local zoning ordinances.
4. SC Code § 6-9-110 exempts state property from local ordinances that require permits, licenses or other devices as means of enforcing building standards.
5. SC Code § 6-9-110 provides for the training and certification of OSE staff as Deputy State Fire Marshals.
6. SC Code § 10-1-180 provides that all construction, improvement, and renovation of state buildings must comply with all applicable Building Code standards as specified in the Manual for Planning and Execution of State Permanent Improvements - Part II.
7. SC Code § 11-35-410 provides that any person may inspect or copy public records after an award, except as exempted by SC Code § 30-4-40. Normally a procurement file is considered a public record, except for that portion of the submittal which at the time of the submission was marked as confidential.
8. SC Code § 11-35-510 vests all rights, powers, duties, and authority relating to centralization of materials management with the Chief Procurement Officers. This section transfers this authority from all other governmental bodies to the Chief Procurement Officers, regardless of the source of funds. This authority is subject to specific listed exceptions.
9. SC Code § 11-35-540 permits the Board to promulgate regulations, to approve agencies internal operational procedures for procurement, and to audit and monitor agencies procurement procedures.
10. SC Code § 11-35-710 provides that the Board may exempt specific purchases from the Procurement Code.
11. SC Code §§ 11-35-810, 820, and 830 create respectively the Office of Materials Management, the Office of Information Technology Management, and the Office of State Engineer.
12. SC Code §§ 11-35-1520 and 11-35-3020 requires that procurements of design and construction services valued at more than \$50,000 be advertised in "South Carolina Business Opportunities" or a means of central electronic advertising approved by the designated Board office.
13. SC Code § 11-35-4210 provides protest rights to certain individuals and permits the Chief Procurement Officer to attempt to resolve protested solicitations and awards.
14. SC Code § 11-35-4220 permits the Chief Procurement Officer to suspend or debar a person or firm from consideration for award of contracts.
15. SC Code § 11-35-4230 permits the Chief Procurement Officer to attempt to resolve contract and breach of contract controversies.
16. SC Code § 11-35-4410 establishes the South Carolina Procurement Review Panel as the final administrative review for all decisions by the Chief Procurement Officers.

17. SC Regulation 19-445.2015 sets forth the procedure for termination or ratification of unauthorized procurements.

18. SC Regulation 19-446 sets the requirements for persons representing clients in contract disputes and other proceedings before the Chief Procurement Officer for Construction.

19. SC Regulation 19-445.2010 requires that when an Agency receives a written request for procurement information from an actual offeror prior to contract award (after bid opening but before end of protest period), the Agency must make such information (excluding confidential and exempt information), available for inspection within 10 days.

1.2 ROLE OF THE STATE ENGINEER AND OFFICE OF THE STATE ENGINEER (OSE)

The State Engineer and OSE's primary role is to assist the Agency to procure design and construction in the manner best suited to the Agency's needs. The State Engineer is responsible to assure that all such procurements comply with state law. The State Engineer, as the Building Official and Deputy State Fire Marshal for construction of state buildings and facilities, is responsible to assure all such construction provides a safe environment for all occupants. Finally, the State Engineer serves as the administrator of the State-level Floodplain Management Program for State lands.

1.3 PURPOSE OF THIS MANUAL

The SC Consolidated Procurement Code and other Statutory Provisions require OSE to prepare and maintain the Manual for Planning & Execution of State Permanent Improvements. While OSE has prepared this Manual to comply with the law, OSE hopes Agencies will view this Manual as an aid in the construction process. This Manual, we believe, will provide the Agency with an understanding of the requirements of state procurement law, assistance in procuring design and construction in compliance with that law, assistance with complying with state law regarding building codes, and assistance with managing their construction projects. The Manual is posted on OSE's Web Site at <http://www.mmo.sc.gov/MMO/ose/MMO-ose-manual.phtm>.

1.4 ORGANIZATION

OSE has organized this manual to flow as closely as possible in the order of the construction process. Each chapter provides assistance with various stages of the construction project. At the back of the manual is a glossary of terms used throughout the manual and appendices providing additional information such as standard modifications to contracts and forms referenced in the Manual.

1.5 KEY DEFINITIONS

"Construction" is the process of building, altering, repairing, remodeling, improving, or demolishing any public structure, building, or other improvements of any kind on any public real property. It does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property. S.C. Code Ann. § 11-35-2910(2)

"Agency" is the "Governmental Body" procuring design or construction.

"Governmental Body" is a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, Agency, government corporation, or other establishment or official of the executive or judicial branch. S.C. Code Ann. § 11-35-310(18)

1.6 AGENCY RESPONSIBILITIES

Each Agency is responsible for its construction-contracting program: the Agency must determine the necessity for design or construction services; the Agency must secure project funding; and the Agency must

comply with State and Federal laws, regulations, and procedures in procuring and administering construction.

1.7 GENERAL PROCUREMENT INFORMATION

A. CHIEF PROCUREMENT OFFICERS – AUTHORITY AND DELEGATION OF AUTHORITY

South Carolina Law establishes three Chief Procurement Officers, the State Engineer (SE), the Materials Management Officer (MMO), and the Information Technology Management Officer (ITMO). Collectively, the Chief Procurement Officers have the authority and responsibility for all state procurement. The only exceptions are when the General Assembly or the Board exempts or otherwise transfers specific authority to others. Procurement responsibilities of the Chief Procurement Officers are as follows:

<u>CATEGORY</u>	<u>SE</u>	<u>MMO</u>	<u>ITMO</u>
1. Construction-Related Professional Services	X		
2. Construction, over Agency Certification	X		
3. Repair, \$50,000 or greater and over Agency Certification		X	
4. Maintenance, over Agency Certification		X	
5. Operation, over Agency Certification		X	
6. Goods and Services, over Agency Certification		X	
7. Data Processing, over Agency Certification			X
8. Telecommunications, over Agency Certification			X
9. Office System Technology, over Agency Certification			X
10. Information Technology Services, over Agency Certification			X

NOTE: See the Glossary for definitions of these categories.

Each Agency has the authority to conduct construction procurements up to and including \$50,000. Such procurements are subject to the requirements of the Procurement Code and applicable requirements of this Manual. The Board may grant an Agency a higher construction certification limit as discussed in Chapter 3.

Upon the recommendation of the designated board office, the Board may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The Audit and Certification Group maintains current listings of all exemptions and certifications, which are available through the MMO Web site (<http://www.mmo.sc.gov/MMO/audit/MMO-audit-index.phtm>) or by contacting the Audit and Certification Group.

B. ADVERTISING OF DESIGN AND CONSTRUCTION PROCUREMENTS

Chapters 4 and 6 of this Manual describe the minimum requirements for advertising procurements for professional services and construction. The Agency must publish all advertisements required by this Manual in South Carolina Business Opportunities (SCBO). The Materials Management Office publishes SCBO. To improve competition, Agencies may also advertise in other media, but such advertisements are not legal advertisements that meet the public notice requirements of the Procurement Code.

SCBO is available by paid subscription in paper form or for free on the MMO Web site (<http://www.mmo.sc.gov/MMO/ops/MMO-scbo-index.phtm>). The SCBO publication schedule is:

<u>Forms Received at SCBO By:</u>	<u>Are Published The Following:</u>
Noon on Tuesday	Thursday
Noon on Thursday	Monday

C. PERMANENT IMPROVEMENT PROJECT (PIP)

For the definition of a Permanent Improvement Project (PIP), Agencies should consult the Manual for Planning and Execution of State Permanent Improvements - Part I (Manual Part I). The Agency may find the Manual Part I at <http://www.budget.sc.gov/OSB-cbu-manual.phtm> or by contacting the Capital Budgeting Unit in the Office of State Budget. The Manual Part I defines the process for establishing a PIP. The Board documents its approval of a PIP on a Form A-1. Form A-1 is available in Appendix A to the Manual Part I or is available from the Capital Budgeting Unit. Agencies should direct questions on procedures related to the PIP process to the Capital Budgeting Unit.

An Agency may not implement a PIP until the Board has approved a Form A-1. However, if the Agency expects a project to result in a PIP, the Agency may advertise and interview for architectural and engineering (A/E) services and negotiate a proposed contract before Board approval of a Form A-1. The Agency may not award a contract for A/E services on a PIP and the A/E may not perform any work until the Board approves a Form A-1.

D. NON-PERMANENT IMPROVEMENT PROJECT (NON-PIP)

A Non-Permanent Improvement Project is a construction project that does not meet the definition of a PIP as contained in the Manual Part I. If an Agency begins a construction project that does not meet the PIP definition, but it subsequently qualifies as a PIP, the Agency must seek to establish the project as a PIP by submitting an A-1 form to the Capital Budgeting Unit as soon as they know that the project qualifies as a PIP.

E. PROJECT NUMBERING

OSE gives each project under its jurisdiction a unique project number. The Agency needs to assure that this number appears on all documents and correspondence associated with the project. OSE's project number format is as follows:

1. Permanent Improvement Project Number

H59	9659	AC	B1
Agency Number	PIP Number (assigned by Capital Budgeting)	OSE PM (assigned by OSE)	Project Phase (optional)

2. Non-Permanent Improvement Project Number

H12	N046	MJ	C
Agency Number	Non-PIP Number (assigned by OSE)	OSE PM (assigned by OSE)	Project Phase (optional)

3. Indefinite Delivery Contract Number

H75	D015	GW	F2
Agency Number	IDC Number (assigned by OSE)	OSE PM (assigned by OSE)	Project Phase (optional)

OSE uses Project Phases (up to two alphanumeric characters) to identify smaller elements of a large project when an Agency plans to award separate design and construction contracts for those smaller elements.

F. TYPES OF CONSTRUCTION PROCUREMENTS

The Procurement Code allows the following methods of construction procurement:

1. Competitive Sealed Bidding - Chapter 6 of this Manual;
2. Construction Management - Chapter 6 of this Manual;

3. Design-Build - Chapter 6 of this Manual; and
4. Small Purchases - Chapter 8 of this Manual;
5. Sole Source Procurements - Chapter 8 of this Manual;
6. Emergency Procurements - Chapter 8 of this Manual;

1.8 UNAUTHORIZED PROCUREMENTS

The Board may prescribe administrative penalties for violations of the Procurement Code and Regulations. The Board may revoke or reduce procurement authority for violation of these provisions.

Agencies must terminate contracts for procurements made in violation of the Procurement Code unless an authorized individual determines in writing that the contract is in the best interest of the state. See SC Regulation 19-455.2015 for details on terminating or ratifying such procurements.

1.9 RELATIONSHIP BETWEEN LOCAL OFFICIALS AND STATE AGENCIES

A. LOCAL ORDINANCES AND REGULATIONS

Local ordinances or regulations that require the purchase or acquisition of a permit utilized to enforce building codes and standards do not apply to state construction projects. SC Code Ann. § 6-9-110(A). The State Engineer determines the enforcement and interpretation of all applicable building codes and standards on state buildings. Local officials may comment on the application of building codes to state buildings through the State Engineer but may not delay construction or delay or deny water, sewer, power or other utilities, or fire fighting services. SC Code Ann. § 10-1-180.

B. STATE FIRE MARSHAL

Certified Personnel of the OSE and deputy state fire marshals (including resident state fire marshals) have exclusive jurisdiction over state buildings in the exercise of the State Fire Marshal's powers and jurisdictional authority. SC Code Ann. § 6-9-110(B).

C. LOCAL ZONING ORDINANCES

State agencies are subject to local zoning ordinances. SC Code Ann. § 6-29-770. However, local zoning ordinances do not apply to homes serving nine or fewer mentally or physically handicapped persons provided they provide care on a twenty-four hour basis. SC Code Ann. § 6-29-770(E) provides a binding procedure for working with local government authorities to select a site for such homes.

1.10 FREEDOM OF INFORMATION ACT

The following generally describes some of the applicable requirements of the FOIA but is not a complete review of the requirements of either FOIA or the Trade Secrets Act.

Each Agency is responsible for its compliance with the South Carolina Freedom of Information Act (FOIA - SC Code Ann. § 30-4-10 through 110) and the South Carolina Trade Secrets Act (SC Code Ann. §39-8-10 through 130). Each Agency is also responsible for the development and enforcement of internal policies and procedures to ensure compliance.

Except as exempted by §30-4-40, any person may inspect or copy public records after an award. The following specifically applies to procurements:

1. Normally, a public procurement file is a public record subject to public viewing.
2. Until the Agency posts a Notice of Intent to Award, only the information disclosed by the Agency's procurement officer or his designee at the opening of sealed bids is public information.
3. In the case of professional services procurements, the following becomes public information at the time the Agency posts a Notification of Selection for Contract Negotiations:
 - a. Information related to the Agency's determination of the firms selected for final interview.

b. Information related to the Agency's determination of the final ranking of the interviewed firms.

4. Material not marked as confidential at the time of submittal is public information.

5. Information relative to the identity of the maker of a gift to a public body must not be disclosed when the maker specifies, as a condition of the gift, that the public body not reveal his/her identity.

6. The public body must separate records containing information that is exempt from disclosure before making the remaining information available to the public.

If an actual offeror makes a written request for procurement information prior to contract award, the Agency must make documents directly related to the procurement activity that are not exempted available for inspection within 10 days of receiving the request. (SC Reg. 19 445.2010) In all other cases, if a person makes a written FOIA request to the Agency, the Agency must provide that person written notification as to public availability of the records within 15 days (excluding Saturday, Sundays and legal holidays) of receiving the request.

Any person that violates the provisions of FOIA is guilty of a misdemeanor and subject to the penalties listed in SC Code Ann. §30-4-110.

1.11 LEGAL REMEDIES FOR SOLICITATIONS AND AWARDS (SC Code § 11-35-4210)

The procurement code provides aggrieved persons with proper standing the right to protest both a contract solicitation and a contract award.

A. PROTESTING A CONTRACT SOLICITATION

1. Who can protest? Any prospective bidder, offeror, contractor, or subcontractor may protest a contract solicitation.

2. What is the deadline for protesting? Protest must be filed within fifteen days of the date of the Invitation for Bids, Request for Proposal, Solicitation, or Amendment, if the amendment is at issue. The State Engineer must receive the protest by 5 PM of the fifteenth day. If the fifteenth day falls on a weekend or a holiday, the State Engineer must receive the protest by 5 PM of the next business day.

3. How does someone submit a protest? A protestant must submit a written protest to the State Engineer. Protestor may submit a protest by letter, facsimile, or e-mail.

Mailing Address: State Engineer
1201 Main Street Suite 600
Columbia, SC 29201
Facsimile No.: 803-737-0639
E-mail Address: protest-ose@mmo.sc.gov

4. What information should the protestant provide in the written protest? The protestor must:

1. Set forth the specific nature of the controversy;
2. Set forth the specific relief requested; and
3. Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the protestor wants the State Engineer to decide.

B. PROTESTING A CONTRACT AWARD:

1. Who can protest? Any actual bidder, offeror, contractor, or subcontractor may protest a contract award.

2. What is the deadline for protesting? Protest must be filed within ten days of the date of posting of Notice of Intent to Award. The State Engineer must receive the protest by 5 PM of the tenth day. If the

tenth day falls on a weekend or a holiday, the State Engineer must receive the protest by 5 PM of the next business day. The protestant may amend his/her protest at any time before 5 PM of the fifteenth day after the posting of Notice of Intent to Award.

3. How does someone submit a protest? See A-3 above.

4. What information should the protestant provide in the written protest? See A-4 above.

C. RESOLUTION PROCESS FOR PROTESTS

The Agency must first attempt to resolve all protests by mutual written agreement between the aggrieved parties. The OSE Project Managers are available to assist. If the efforts at mediation fail to resolve the protest, the State Engineer will conduct an administrative review of the issues raised by the protestant and issue a written decision. The administrative review process may include a formal hearing. More information on the administrative review process is available through the MMO legal counsel's Web site (<http://www.mmo.sc.gov/MMO/legal/MMO-legal-index.phtml>).

Unless a person adversely affected by the State Engineer's decision files an appeal with the Procurement Review Panel, the Agency may award the contract on the eleventh day after the State Engineer posts his decision.

D. APPEALS TO THE PROCUREMENT REVIEW PANEL

Any person adversely affected by the decision of the State Engineer may appeal that decision to the South Carolina Procurement Review Panel (Panel) within 10 days from the posting of the decision. The appellant should address the appeal to the State Engineer as set forth above. The appellant must submit with his/her appeal a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel.

In order to prosecute an appeal before the Panel, the appellant must retain an attorney.

E. STAY OF PROCUREMENT DURING PROTESTS

When a prospective bidder or offeror protests a solicitation to the State Engineer, the Agency may not proceed with the procurement or enter into a contract until the protest is resolved. EXCEPT, the State Engineer, upon written request by the head of the Agency, may determine in writing that it is necessary, and in the best interest of the State, to allow the contract award process to continue pending resolution of the protest.

1.12 LEGAL REMEDIES FOR CONTRACT CONTROVERSIES (SC Code § 11-35-4230)

A. GENERAL

In the event of a contract dispute between the Agency and one of its contractors or subcontractors, the Agency must first attempt to resolve the dispute without resort to further action. The OSE Project Managers are available to assist the Agency in resolving any dispute. If the parties cannot resolve their dispute, either party may file a request for resolution of the dispute with the State Engineer. A party cannot seek redress in the courts without going through the following resolution process.

B. FILING A REQUEST FOR RESOLUTION OF A DISPUTE OR CONTROVERSY (REQUEST FOR RESOLUTION)

1. Who can file a request for resolution? The contracting Agency, contractor, or a subcontractor may file a written Request for Resolution of a contract controversy with the State Engineer. For the purposes of resolving contract controversies, the terms "contractor" and "subcontractor" include prime design professionals and their first tier consultants.

2. What is the deadline for filing a request for resolution? The requesting party must file his/her request within one year of the date the contractor last performed work under the contract, unless the basis for the claim is a latent defect. In the case of claims for latent defects, the requesting party must file his/her request within three years of the date the requesting party knew or should have known of the defect that is the basis for the claim.

3. How does someone file a request for resolution? The party filing must submit a written request for resolution to the State Engineer. The party may submit the request by letter, facsimile, or e-mail

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Columbia, SC 29201
Facsimile No.: 803-737-0639
E-mail Address: protest-ose@mmo.sc.gov

4. What information should the party filing a request for resolution include in the request? The protestor must:

1. State the general nature of the controversy
2. State the relief requested
3. Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the filing party wants the State Engineer to decide.

C. RESOLUTION PROCESS FOR CONTRACT CONTROVERSIES

Formal mediation is the first step in the process of resolution of a contract controversy. An OSE Project Manager or other mutually agreeable party appointed by the State Engineer will act as the mediator. The parties involved in the controversy must participate in the mediation process.

In the event mediation fails to resolve all the issues in the contract controversy, the State Engineer will conduct an administrative review of the issues raised by the claimant and issue a written decision. The administrative review process may include a formal hearing where the parties have the opportunity to present evidence and testimony, cross-examine witnesses, and submit arguments to support their position. Legal representation is not required for a hearing before the State Engineer.

Each party must supply all proposed exhibits and related information at the administrative hearing along with sufficient copies for all other parties. The State Engineer may direct the parties to exchange exhibit information and witness lists before the hearing.

Each party must furnish sufficient evidence and witnesses to substantiate its claim. Unsupported testimony from the claimant is not sufficient to establish the amount of an award for a requested claim. If the respondent believes the value of a claim is unreasonable, then respondent must present evidence or witnesses to substantiate a different value for the claim.

D. APPEALS TO THE PROCUREMENT REVIEW PANEL

Any person adversely affected by the decision of the State Engineer may appeal that decision to the South Carolina Procurement Review Panel (Panel) within 10 days from the posting of the decision.

The appellant should address the appeal to the State Engineer as set forth above. The appellant must submit with his/her appeal a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel.

In order to prosecute an appeal before the Panel, the appellant must retain an attorney.